

Department of State

§ 124.9

believes that a clause or that required information is not relevant or necessary, the applicant may request the omission of the clause or information. The transmittal letter accompanying the agreement must state the reasons for any proposed variation in the clauses or required information.

(1) The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They should be described by military nomenclature, contract number, National Stock Number, nameplate data, or other specific information. Supporting technical data or brochures should be submitted in seven copies. Only defense articles listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) The agreement must specifically describe the assistance and technical data, including the design and manufacturing know-how involved, to be furnished and any manufacturing rights to be granted;

(3) The agreement must specify its duration; and

(4) The agreement must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed.

§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(1) "This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."

(2) "This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or

collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to §§ 124.16 and 126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained.

(6) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

[58 FR 39305, July 22, 1993, as amended at 76 FR 28177, May 16, 2011]

§ 124.9 Additional clauses required only in manufacturing license agreements.

(a) *Clauses for all manufacturing license agreements.* The following clauses must be included only in manufacturing license agreements:

(1) "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."

(2) "It is agreed that sales by licensee or its sub-licensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or

charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.”

(3) “If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.”

(4) “If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data.”

(5) “The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State.” This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See § 126.10(b) of this subchapter.

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(b) *Special clause for agreements relating to significant military equipment.* With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) “A completed nontransfer and use certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place.”

(2) “The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory.”

§ 124.10 Nontransfer and use assurances.

(a) Types of agreements requiring assurances. With respect to any manufacturing license agreement or technical assistance agreement which relates to significant military equipment or classified defense articles, including classified technical data, a Nontransfer and Use Certificate (Form DSP-83) (see § 123.10 of this subchapter) signed by the applicant and the foreign party must be submitted to the Directorate of Defense Trade Controls. With respect to all agreements involving classified articles, including classified technical data, an authorized representative of the foreign government must sign the DSP-83 (or provide the same assurances in the form of a diplomatic note), unless the Directorate of